S.B. Civil Writ Petition NO.2936/2005
LRs of Rama Ram
vs
Prabhu Ram & Ors.

DATE OF ORDER : - 19.5.2005.

HON'BLE MR. PRAKASH TATIA,J.

Mr.NK Goyal, for the petitioner.

<><><>

Heard learned counsel for the petitioner.

According to learned counsel for the petitioner in the petitioner's suit ex-parte decree was passed on 6th Nov., 1979. Against which, an appeal was preferred before the Revenue Appellate Authority by one Kan Singh defendant. The said appeal was allowed by the Revenue Appellate Authority vide order dated 24th Nov., 1980 and ex-parte decree was set aside and matter was remanded to the trial court with certain directions as mentioned in paras no. (Ka) and (Kha) of the judgment and decree of the revenue appellate court dated 24th Nov., 1980. This order was challenged by the plaintiff-petitioner by filing appeal before the Board of Revenue. The Board of Revenue after upholding the order of the Revenue Appellate Authority of setting aside of the ex-parte decree directed the trial court to proceed. However, the Revenue Board ordered that it shall be open to the respondents to move an application under Order 9 Rule 7 CPC for setting aside the ex-

parte order dated 20th August, 1979 and that application will be decided by the trial court and in case, the ex-parte order dated 28th August, 1979 is set aside then the direction given in para no.(Kha) in the order of the Revenue Appellate Authority will come into force. It is also ordered that if the ex-parte order dated 20th August, 1979 is not set aside and the appellants fails to produce written compromise signed by both the parties as directed in para no.(Kha), the suit will proceed ex-parte as against the said defendants and the suit of the plaintiff will be disposed of in accordance with law.

After this order of the Board of Revenue dated 10th March, 1987, the proceedings were taken in the trial court and compromise was submitted and a decree was passed by the trial court on 8th June, 2000. The petitioner-plaintiff instead of challenging the order by filing appeal, straight way submitted application under Section 221 of the Rajasthan Tenancy Act challenging the judgment and decree of the trial court dated 8th June, 2000. The said application of the petitioner was dismissed by the Board of Revenue after holding that the petitioner-plaintiff did not choose to challenge the decree by filing regular appeal and, therefore, no case is made out for interference by the Board of Revenue by exercising power under Section 221 of the Rajasthan Tenancy Act, which is a power giving supervisory power to the Board of Revenue, which can be exercised sparlingly and in extra ordinary case.

The superintendence power cannot be converted into a power of appeal. According to learned counsel for the petitioner, in view of the judgment of the Hon'ble Apex Court delivered in the case of Surendra Pal Singh Vs. Board of Revenue & Ors reported in RRD 1993 598, the power under Section 221 are wide enough and the Board can regulate the functioning of the subordinate courts and in case the subordinate disregards any specific provision of law and does something illegal it is open to the Board of Revenue to interfere and set the matter at right.

According to learned counsel for the petitioner, the trial court committed illegality in passing the decree in violation to the remand order. It appears from the facts of the case that no ground has been given out by the petitioner for not challenging the decree passed by the trial court in regular way by preferring the appeal. It appears that the petitioner is under impression that supervisory power of the court are meant to bye pass the statutory remedy and can be invoked by the parties themselves so as to ask the Board to invoke the supervisory jurisdiction where aggrieved party failed to avail the remedy available in the statutory provision of law. There must exist some reason for invocation of the powers under Section 221 of the Rajasthan Tenancy Act otherwise whole purpose of providing procedure of appeal and, thereafter, second appeal will frustrate.

In view of the above facts, I do not find any merit in this writ petition and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-